

## **REMARKS**

In the November 4, 2004 Office Action, it appears that the Examiner has withdrawn all objections and rejections of the claims except for one. Specifically, at page 4 of the Office Action the Examiner rejects claims 1,4-7, 9-13 and 15-17 under 35 USC §103(a) as allegedly unpatentable over Glenn, Jr. et al. (WO 96/25144, equivalent to U.S. Patent No. 6,080,708, hereinafter referred to as "Glenn"). The Examiner argues that Glenn discloses oil-in-water emulsions comprising all the elements of the claims of the subject invention except that Glenn does not expressly disclose that the lipid phase is at temperature below 35°C, and the particular retention efficiency index, foam value and irritation potential as claimed. This rejection is respectfully traversed for reasons set forth below.

The final oil-in-water emulsions of the subject invention, although they may comprise some overlapping ingredients, are distinctly different from the final oil-in-water compositions of the Glenn reference. Thus, for example, while the trihydroxystearin component in the Glenn reference is found in the aqueous phase and is used to stabilize components in the aqueous phase, the trihydroxystearin in the subject invention is found in the oil phase and, applicants believe, are actually believed responsible for a destabilizing effect which is in turn responsible for high oil retention on wet skin.

In this regard, applicants enclose a copy of a Declaration of Michael P. Aronson (an inventor of the subject invention) which applicants mailed May 27, 2004 in connection with co-pending U.S. Serial No. 09/859,862, also to Aronson et al. The '862 application is the "composition" case corresponding to the present "process" case which was filed on the same date as the subject invention and was assigned to a different Examiner.

Directing the Examiner's attention to paragraph 7 of the May 27, 2004 Declaration, applicants again note that the trihydroxystearin, for example, used in Glenn is clearly in the aqueous phase. This is clear both from the language cited (see paragraph 7 of Declaration) and further from the manner in which the composition is prepared, again as cited in paragraph 7 (i.e., trihydroxystearin added to distilled water and prepared as pre-mix; and separate oil premix added to water/hydroxystearin premix later).

The reason the trihydroxystearin in the subject invention ends up in the oil phase (and ends up serving a completely different function) is precisely because it is prepared in a completely different way (see paragraph 9 of the Declaration). Thus, in the subject invention, (1) the oil and structurant (e.g., trihydroxystearin) are prepared as a premix; (2) the aqueous solution with water soluble thickening agent is separately prepared; (3) the oil premix is combined with the thickened aqueous pre-mix to form lumps of oil mixture; and (4) the aqueous solution containing oil lumps is screened to form final oil-in-water emulsion containing structured oil phase.

These specific process steps, which result in a structured oil phase as defined, are clearly not taught or suggested by Glenn.

Finally, the result of this different processing (which processing is encompassed by the claims of the subject invention) is obtaining different emulsions (i.e. different than those of Glenn) having different emulsion properties. Here applicants direct the Examiner's attention to paragraph 12,13 and 14 of the Declaration.

First, as indicated in paragraph 12 and accompanying Figure 1 of the Declaration, the photos show clearly that the oil phase of the subject invention is structured by a crystalline network while the oil phase of Glenn is not. Second, as indicated in paragraph 13 and 14, the trihydroxystearin in the oil phase does not stabilize but instead forms large flocs. It is the presence of these large flocs which is

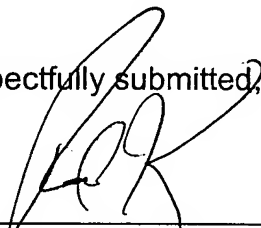
believed directly responsible for the higher oil retention index found in compositions of the subject invention.

In short, applicants have shown that the process of the subject invention (embodied in the claims) is clearly different that the process of Glenn and, moreover, this results in compositions which are substantially different.

In view of the comments above, including submission of copy of the Declaration of Michael P. Aronson, it is respectfully requested that the Examiner reconsider and withdraw the rejection of the claims.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



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